



# Civil Resolution Tribunal

Date Issued: April 30, 2021

File: SC-2020-008373

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Tran v. Ecologist Outfitters Inc.*, 2021 BCCRT 454

**B E T W E E N :**

JULIE TRAN and SEBASTIEN GARON

**APPLICANTS**

**A N D :**

ECOLOGYST OUTFITTERS INC. and RENE GAUTHIER

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

### **INTRODUCTION**

1. This dispute is about a cancelled vacation booking. The applicants, Julie Tran and Sebastien Garon, each invested \$5,000 in the respondent company Ecologist Outfitters Inc. (Ecologist). It is undisputed the applicants each accepted Ecologist's offer of 2 nights' stay at a cabin (Cabin), as a free incentive perk based on the

amount of their \$5,000 investment. The Cabin is co-owned by the respondent Rene Gauthier. Mr. Gauthier is Ecologyst's CEO.

2. Through an admitted booking error, Ecologyst was unable to accommodate the applicants at the Cabin for their 4 booked nights in November 2020. The applicants claim a total of \$2,185.40 related to their obtaining alternative accommodation.
3. Ecologyst says the Cabin stay was a bonus/perk with zero cash value, as the equity in Ecologyst was the valuable aspect of the applicants' investment. Ecologyst denies the applicants are entitled to any compensation. Mr. Gauthier denies personal liability and says he made no personal commitment to the applicants.
4. Ms. Tran represents the applicants. Mr. Gauthier represents himself and Ecologyst.
5. For the reasons that follow, I allow the applicants' claim in part.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute through written submissions.
8. Under section 42 of the CRTA, the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information

would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

9. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUE**

10. The issue in this dispute is whether the respondents are required to compensate the applicants for alternative accommodation expenses when Ecologyst failed to provide the free Cabin stay as agreed, and if so, how much.

## **EVIDENCE AND ANALYSIS**

11. In a civil claim like this one, the applicants bear the burden of proving their claim, on a balance of probabilities. While I have reviewed the parties' submitted evidence and arguments, I have only referenced below what I find is necessary to give context to my decision.
12. The parties agree the applicants each invested \$5,000 in Ecologyst, through buying shares. The undisputed evidence shows Ecologyst offered different incentives for prospective investors, based on the amount of their investment. At the \$5,000 level, Ecologyst offered 2 incentive options: 2 nights' stay at the Cabin or a jacket.
13. This dispute is about whether the applicants are entitled to compensation for the undisputed fact the Cabin was unavailable for the November 14 to 18, 2020 period Ecologyst had agreed the applicants could use it. At issue are the applicants' expenses for alternative accommodation they booked after they were told in September 2020 that the Cabin was unavailable for their booked November dates.
14. For a valid contract to exist, the parties must agree on all essential terms and those terms must be clear enough to give a reasonable degree of certainty. The parties must both intend to be bound by these essential terms. There must also be an offer

by one party that is accepted by the other, plus valuable “consideration”. “Consideration” means payment of money or something else of value. (See discussion on contract formation in *Redfern Resources Ltd. (Re)*, 2012 BCCA 189 and *Fairchild Developments Ltd. v. 575476 B.C. Ltd.*, 2020 BCCA 123.)

15. I accept the applicants’ undisputed evidence that they were incentivized to each invest at the \$5,000 level in order to obtain the free Cabin stay. There is no suggestion the applicants were ever interested in the jacket, which the evidence shows has a \$325 market value. I find Ecogyst offered the Cabin stay as an included incentive, the applicants accepted that offer, and the applicants’ investments at the \$5,000 level was the consideration paid. In other words, I find the parties contracted for the Cabin stay to be provided as an included perk at no additional charge to the applicants.
16. In particular, in July 2020 Ms. Tran emailed with an Ecogyst representative and Ecogyst agreed the applicants could book the Cabin for November 14 to 18, 2020. Due to an admitted error on Mr. Gauthier’s part, the Cabin’s co-owners had already arranged to use the Cabin on November 14 and 15 and were unable to change their plans. However, it was not until September 11, 2020 that Ecogyst’s representative advised Ms. Tran of this booking error and asked her to consider alternative dates.
17. Ms. Tran responded that she could not find alternative dates, as the booking was to celebrate Mr. Garon’s birthday. Ms. Tran added that the alternative would be to give the applicants a voucher for \$395 x 4 nights, plus tax, so they could book a similar cabin on their chosen dates. Ecogyst ultimately responded to the effect that this was excessive and sought alternative solutions, staying elsewhere for 2 nights and then at the Cabin for the last 2 nights. I agree with the applicants that it would be unreasonable to expect them to move between accommodations in the middle of their 4-night vacation. Based on the evidence before me, and given the relatively late date that Ecogyst told the applicants the Cabin was double booked, I also find the applicants had no contractual obligation to accept alternative dates for their Cabin stay.

18. I turn to Mr. Gauthier's personal liability. The double booking admittedly arose due to his error. While Mr. Gauthier personally co-owns the Cabin, at all material times I find his involvement with the applicants was through his role in Ecologyst. I find no legal basis to hold him personally liable. The applicants' booking of the Cabin was with Ecologyst, which as noted offered its use as an incentive. I acknowledge that at one point Mr. Gauthier offered to personally compensate the applicants for 2 of the 4 nights' stay, but since the applicants declined that offer I see no basis to hold him to it. So, I dismiss the applicants' claims against Mr. Gauthier. The balance of my decision addresses Ecologyst's liability.
19. The subscription agreement the applicants signed to buy their shares in Ecologyst does not mention the Cabin stay or any other incentives or perks. As noted, the respondents argue the Cabin stay had no cash value, pointing to the fact Mr. Gauthier co-owns the Cabin and so it was being provided as a free perk to investors at no cost to Ecologyst. The respondents argue the equity in Ecologyst is the valuable aspect of the applicants' investment. I disagree with the respondents' position. None of Ecologyst's email communications to the applicants about the Cabin said that it has no cash value. Contrary to the respondents' assertion, the fact that those communications were silent about the Cabin's value does not mean it has zero value. My further reasons follow.
20. Unless the parties' agreement is terminated, they must fulfil their express and implied obligations under it. Termination by repudiation occurs when a party shows an intention to not be bound by the agreement and the other party accepts the repudiation. See *Kuo v. Kuo*, 2017 BCCA 245 at paragraphs 39 to 40.
21. I find by agreeing to the November 2020 Cabin dates and then cancelling them, Ecologyst breached its agreement with the applicants. I find the applicants accepted the repudiation by booking accommodation elsewhere.
22. There is no suggestion here Ecologyst's failure to deliver the Cabin stay as agreed amounted to a fundamental breach of its contract with the applicants, which was primarily about their combined \$10,000 investment. The applicants still retain their

shares. Rather, I find Ecologyst's breach allowed the applicants to sue for damages, with the parties still otherwise bound by the share purchase agreements they signed (see *1061403 B.C. Ltd. v Canada Willingdon Holdings Ltd.*, 2018 BCSC 1067 at paragraphs 65 to 71).

23. I do not agree with the respondents that the applicants' loss of the Cabin stay as agreed should be valued at zero, based on its zero cost to Ecologyst. Rather, damages for breach of contract are intended to place the applicants in the position they would have been in if the contract for the Cabin stay had been carried out as agreed (see *Water's Edge Resort Ltd. v. Canada (Attorney General)*, 2015 BCCA 319 at paragraph 39).
24. Here, the applicants' claim for damages is broken down as follows (and discussed further below): \$25 for the cancellation fee they paid to the Wickaninnish Inn, the \$1,248.68 they paid for 4 nights at an alternative cabin, and \$911.72 which is their calculation of the difference between the Cabin's value and the lower value of the cabin they stayed in.
25. So, what is the appropriate measure of the applicants' damages arising from Ecologyst's failure to deliver the Cabin stay as agreed?
26. The evidence shows Ms. Tran booked the Wickaninnish Inn immediately following Ecologyst's advice the Cabin was not available. I find Ms. Tran reasonably cancelled that reservation in response to Mr. Gauthier's September 2020 email saying Ecologyst was unlikely to reimburse the Wickaninnish Inn expense. I find Ms. Tran reasonably then sought a less expensive cabin in the hopes of a resolution. So, I allow the \$25 cancellation fee.
27. I also allow the \$1,248.68 the applicants undisputedly paid for the alternative cabin, as supported by the receipts in evidence. There is no argument this rate was unreasonable, other than the respondents' argument I have rejected above that the Cabin should have zero value.

28. However, I do not allow the \$911.72 for the difference between the Cabin's value and the alternative cabin's value. The evidence shows the remote Cabin is in the wilderness on Vancouver Island which slept 8, with 3 bedrooms, 5 beds, and 1 bath. The applicants submitted May 2021 pricing listed on Airbnb for the cabin, at \$415 per night, plus fees and taxes for a total of \$2,272 for 4 nights. There is no evidence before me describing the features of the alternative cabin.
29. Ms. Tran argues the Cabin should be valued at \$395 per night (I infer based on 2020 pricing) and because the alternative cabin cost 43% less she says the applicants should be paid the difference. However, the fact that the alternative cabin cost the applicants less than the Cabin rents for on Airbnb does not prove the applicants received less value in the alternative accommodation than they would have received had they stayed at the Cabin. The applicants did not argue and submitted no supporting evidence that the alternative cabin was in fact a lesser accommodation than the Cabin. I dismiss the \$911.72 claim.
30. The *Court Order Interest Act* (COIA) applies to the CRT. I have allowed a total of \$1,273.68 in damages, and find the applicants are entitled to pre-judgment interest under the COIA on that amount, calculated from November 1, 2020 to the date of this decision. I find November 1 is a reasonable date, given that is when the applicants had completed their payment for the alternative cabin. This interest equals \$2.83.
31. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. As the applicants were partially successful, I find they are entitled to reimbursement of half their paid CRT fees of \$125, so \$62.50. No dispute-related expenses are claimed.

## **ORDERS**

32. Within 30 days of this decision, I order Ecoglyst to pay the applicants a total of \$1,339.01, broken down as follows:

- a. \$1,273.68 in damages,
  - b. \$2.83 in pre-judgment interest under the COIA, and
  - c. \$62.50 in CRT fees.
33. The applicants are entitled to post-judgment interest, as applicable. I dismiss the applicants' claims against Mr. Gauthier.
34. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
35. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Shelley Lopez, Vice Chair